

# STORED VALUE CARD AGREEMENT



**NATIONAL MERCHANT CENTER**  
"The only center for all your merchant needs."

8855 Research Drive, Irvine, CA 92618  
Tel: (949) 419-8400 Fax: (949) 265-9053

MERCHANT INFORMATION

☐ New Merchant

☐ Add Location ☐ Add Terminal ☐ Add Card Program  
☐ Change Card Program ☐ Add New Card Type

PRIMARY  
NMCID

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DBA \_\_\_\_\_ Legal Name \_\_\_\_\_  
 Company Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_  
 Company Phone (\_\_\_\_) \_\_\_\_\_ Store# \_\_\_\_\_ of \_\_\_\_\_ locations  
 Principal Name \_\_\_\_\_ Principal SS# \_\_\_\_\_  
 Principal E-mail \_\_\_\_\_ Principal Phone (\_\_\_\_) \_\_\_\_\_

GIFT CARD

☐ Gift Card "Express Package"

For \$129 receive 100 custom gift cards, a merchandising package and 1st month of processing. Thereafter pay \$29 per month for up to 2,400 transactions a year. See details in Section 6 (reverse side).

☐ Gift Card Program

Gift Card per transaction fee \_\_\_\_\_ \$ \_\_\_\_\_  
 Monthly statement fee **\$10.00** Returned ACH fee (NSF, etc.) **\$25.00**

TECHNICAL INFO

Terminal: ☐ GiftCard Only ☐ Integrated with NMC credit/debit processing ☐ Integrated with other processor \_\_\_\_\_  
 (SPECIFY NAME OF COMPANY)  
 Terminal provided by: ☐ NMC ☐ Agent ☐ Merchant  
 Terminal Brand/Model \_\_\_\_\_ Connection Type: ☐ Dial-up ☐ IP-based ☐ Web-based  
 Terminal Serial Number \_\_\_\_\_ PBX Access Line? ☐ No ☐ Yes # \_\_\_\_\_  
 Server/Clerk IDs? ☐ No ☐ Yes 

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NAME CODE

NAME CODE

NAME CODE

MERCHANDISE

☐ New Design/Redesign

Attach Design Request Form for new or modified designs.

☐ Reorder

Specify Card Name when reordering existing design w/o changes ("Regular", "Holiday Card")

(OTHER... SPECIFY Q-TY & PRICE PER ITEM) \$ \_\_\_\_\_ TOTAL

(OTHER... SPECIFY Q-TY & PRICE PER ITEM) \$ \_\_\_\_\_ TOTAL

(OTHER... SPECIFY Q-TY & PRICE PER ITEM) \$ \_\_\_\_\_ TOTAL

Gift Cards Production \_\_\_\_\_ x \$ \_\_\_\_\_ = \$ \_\_\_\_\_  
 Q-TY PER CARD TOTAL

Card Artwork Design \$ \_\_\_\_\_

Merchandise Subtotal \$ \_\_\_\_\_ Taxes % \$ \_\_\_\_\_

(OTHER... SPECIFY Q-TY & PRICE PER ITEM) \$ \_\_\_\_\_ TOTAL

Shipping Charges \$ \_\_\_\_\_ **GRAND TOTAL \$** \_\_\_\_\_

AUTHORIZATION

BANK \_\_\_\_\_  
 ROUTING # \_\_\_\_\_  
 ACCOUNT # \_\_\_\_\_

MERCHANT hereby authorizes NMC in accordance with this MERCHANT Processing Agreement to initiate debit/credit entries to MERCHANT'S bank account, indicated here. The authority is to remain in full force and effect until (a) NMC has received written notification from a MERCHANT of its termination in such a manner as to afford NMC reasonable opportunity to act on it; and (b) all obligations of MERCHANT to NMC that have arisen under this Agreement have been paid in full. This authorization extends to such entries in such account concerning processing fees, lease, rental or purchase agreements for POS terminals and/or accompanying equipment and amounts due for supplies and materials.

**VOIDED CHECK FROM ACCOUNT INDICATED ABOVE MUST BE ATTACHED WITH THIS AGREEMENT**

ACCEPTANCE

By signing below I hereby agree to the terms and conditions stated in the **front** and **back** of this merchant processing agreement and certifies that all information provided is true correct, and complete. I am authorizing NMC, any credit bureau or any credit reporting agency employed by NMC to investigate the references given or any other statements or data obtained from MERCHANT, or any of the undersigned principals, for the purpose of this application for accompanying POS terminal(s) or equipment financing.

**AGREED AND ACCEPTED:**

\_\_\_\_\_  
 DATE SIGNATURE PRINT NAME

PERSONAL GUARANTEE

FOR VALUE RECEIVED, and in consideration of the mutual undertaking contained in this MERCHANT PROCESSING AGREEMENT by and between the Merchant and NATIONAL MERCHANT CENTER (NMC), the undersigned jointly and severally, individually and on behalf of the marital community, unconditionally and irrevocably guarantee to NMC and its successors and assigns the full and prompt payment when due of all the obligations of every kind and nature of MERCHANT arising directly or indirectly out of the Agreement or any document or agreement executed and delivered by MERCHANT in accordance with the terms of the Agreement. The undersigned further agree to pay to the NMC all expenses (including attorney's fees and court costs) paid or incurred by the NMC in collecting such obligations, and in enforcing this Guarantee.

**AGREED AND ACCEPTED:**

\_\_\_\_\_  
 DATE SIGNATURE PRINT NAME

OFFICE USE ONLY

NMC ID

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Date Received \_\_\_\_/\_\_\_\_/\_\_\_\_ Office ID \_\_\_\_\_

Date Completed \_\_\_\_/\_\_\_\_/\_\_\_\_ Agent ID \_\_\_\_\_

## STORED VALUE MERCHANT AGREEMENT FOR ELECTRONIC AUTHORIZATION AND PAYMENT Terms And Conditions

This Stored Value Merchant Agreement for Electronic Authorization and Payment ("Agreement") sets forth the Rules, Policies and Procedures to which International Bankcard Services, dba National Merchant Center ("NMC") is willing to provide, the services set forth in the stored value agreement to the Merchant.

1. **SERVICES.** Merchant must obtain authorization for all transactions that are submitted to NMC. An authorization only indicates the availability of credit on an account at the time that the Authorization is requested. Authorization may be by voice over telephone only if the POS Terminal is not operating. There is a charge for voice authorizations if POS Terminal is operable but not used. In the event NMC authorizes the transaction by voice, it will transmit an Authorization code, which must be written on the Sales Draft. Merchant will provide and store all relevant information for authorization and payment. Merchant will also be responsible for the accuracy and adequacy of all data transmitted by it or on its behalf for processing by or storage of information that is collected.
2. **PAYMENT.** NMC will pay Merchant through the automated clearing house (ACH) system for authorized transactions. As payment for its services, NMC will deduct charges from the authorized transactions as set out on Merchant order form, which may be changed from time to time at the sole discretion of NMC upon notice to Merchant. Charges will include a daily ACH transaction fee. NMC will not be liable for any delays in receipt of funds or errors in credit or debit entries caused by third parties, including, but not limited to any Association or merchant's financial institution. NMC are authorized for at least 180 days after termination of this Agreement, or at NMC's discretion, for a longer period as determined by NMC in the exercise of reasonable discretion to satisfy Merchant's obligations hereunder. To secure all obligations of Merchant to NMC arising from this agreement, merchant hereby grants NMC a security interest in all deposits and funds, regardless of source, whether in merchant's designated account or in other bank accounts, and all proceeds of said deposits. Said security interest may be offset or otherwise exercised by NMC without notice or demand of any kind by making an immediate withdrawal from or freezing said account. The exercise of this security interest shall be in addition to any other rights of NMC under this agreement or applicable laws.
3. **SYSTEM DOWN.** The merchant agrees that in the event the card system to authorize and settle transactions is not able to verify and approve transactions, NMC will not process transactions. Merchant acknowledges that NMC shall not be responsible for lost profits or sales if the system is down. Merchant agrees that it will be solely responsible for any transactions that are authorized by merchant without the knowledge or written consent of NMC and will indemnify and hold harmless NMC for any damage, loss, liability, expense, claim, or other action.
4. **WARRANTIES AND REPRESENTATIVES.** In no event shall NMC, our affiliates, officers, employees, directors, agents, subcontractors or any other affiliates, be liable under any theory of tort, contract, strict liability or other legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is hereby excluded by agreement of the parties, regardless of whether such damages were foreseeable or whether any party or any entity has been advised of the possibility of such damages. Merchant warrants and represents that each transaction to NMC represents a valid obligation for the amount or value set forth therein, is not subject to any disputes, set offs, or counterclaims, is valid in form and complete on its face in accordance with instructions described above. Merchant further warrants that merchandise has been delivered and/or services rendered to the Customers in satisfaction of the underlying obligation. Merchant represents and warrants that Merchant accepts full responsibility to reimburse or otherwise repay NMC for any and all transactions resulting in a charge-back, debit, or funds shortage of any type. Merchant authorizes and grants NMC full discretion to establish a chargeback reserve by debiting Merchant's incoming transactions or other funds of Merchant in NMC's control. In addition, and without holding limiting the foregoing, Merchant authorizes NMC to debit or draft funds of the account designated by Merchant on the Merchant data sheet or otherwise ("Account"), and grants NMC a lien and security interest in the Account for the purpose of collecting amounts which NMC determines to be due to or from Merchant in connection with this Agreement. NMC's security interest in the Account shall continue until NMC notifies the institution holding the account of the termination of its security interest.

Notwithstanding anything in this merchant agreement to the contrary, our cumulative liability for all losses, claims or any cause whatsoever and regardless of the form of action or legal theory shall not exceed (i) \$25,000 or (ii) amount of fees net discount amount received by us pursuant to the merchant agreement for services performed in the immediately preceding six (6) months, whichever is less.

5. **FRAUDULENT SALES/FACTORING:** MERCHANT shall not present to NMC, directly or indirectly, any sales slip or transaction record (i) that MERCHANT knows or exercising reasonable care should have known to be fraudulent or not authorized by the cardholder, (ii) that results from a transaction outside MERCHANT'S normal course of business as described in the Merchant Application, (iii) that results from processing or credit, directly or indirectly, of a transaction not originated as a result of an act directly between a cardholder and the MERCHANT. Should MERCHANT violate any provision in this paragraph, the Agreement with MERCHANT may be immediately terminated by NMC without notice, with all funds otherwise due MERCHANT placed on hold for not less than 180 days. NMC may withhold any payments to MERCHANT that have resulted from fraudulent, suspect, or other questionable transaction.

#### 6. GIFT AND LOYALTY CARD PROCESSING INTEGRATED INTO FOREIGN "Front End Processor" TERMINAL APPLICATION:

- A) Merchant Responsibilities: Merchant shall notify National Merchant Center's customer service department of any modifications to terminal software after the date of installation of NMC's gift card functionality on Merchant's terminal when merchant is processing Visa, MasterCard, American Express, Discover and Debit card transactions on "Foreign Front End Processor.
- B) Limitation of Liability: Merchant shall hold NMC harmless for any problems arising due to inaccurate processing of Visa, MasterCard, American Express, Discover and Debit card transactions. The accurate processing of these transactions is the responsibility of the specific front end processor who has contracted to provide that service.

7. **FEE/RATE ADJUSTMENTS:** Transaction fee shall mean a fee charged on each sales slip and each credit slip regardless of the total stated. NMC shall have the right to adjust charges as necessary to offset any direct or indirect increase to NMC in the costs of providing the services hereunder including but not limited to increases in the costs of living index or due to changes in rules, regulations, or operating procedures of Associations or any additional requirement imposed by any federal or state governmental agency or regulatory authority, or due to any increase in communication costs charged to NMC by communications common carriers. Such increases shall, without prior notice, become effective as of the date of change. The Gift Card Express Package entitles the Merchant to 200 monthly transactions (which equals 2400 per year); there is a \$0.40 per transaction fee for each transaction that exceeds monthly limit.

8. **RECORDS.** Merchant agrees to furnish NMC with such financial or other information about Merchant's business as may be necessary from time to time. NMC shall have the right to verify all sales and to examine Merchant's books, records, and other papers relative to transaction records delivered to NMC.

9. **DATA SECURITY.** NMC and merchant will each safeguard all data relating to the other's business or to the business of customers obtained pursuant to this agreement or the transactions contemplated hereby, to the extent that it safeguards data relating to its own business, unless such data was otherwise available to the public or was already in its lawful possession or was rightfully obtained by it from others. Irrespective of how said data was obtained, the parties shall safeguard such data to the full extent required by law.

10. **TERMS.** This agreement shall become effective upon acceptance by NMC and shall continue in full force and effect for a period of 3 years from the date signed herein (referred to as the initial term). Hereafter, the Agreement will automatically renew for additional one-year periods (referred to as the renewal term) unless terminated by any party upon thirty (30) days written notice before the expiration of the initial term or any renewal term. Merchant understands that NMC has undertaken significant implementation costs and investment costs, which are amortized over the term of this Agreement. In consideration of these costs and the pricing structure offered in this Agreement, Merchant agrees to pay liquidated damages to NMC, in addition to all other amounts owed by Merchant to NMC, if Merchant elects early termination of this Agreement. The liquidated damages for early termination shall be \$275. These liquidated damages are due and payable in a lump sum upon the date of cancellation of the Agreement. You agree that the early termination fee is not a penalty, but rather is reasonable in light of the financial harm caused by your early termination. The undersigned further agree to pay to the NMC all expenses (including attorney's fees and court costs) paid or incurred by the NMC in collecting such obligations.

11. **MISCELLANEOUS.** This Agreement shall become effective when accepted by NMC and shall remain in effect until notice of termination shall have been provided to the other party in accordance with paragraph 9. Notice shall be deemed to have been duly given when mailed to the party at the address given below or otherwise provided. Notwithstanding the foregoing provision, NMC has the right to terminate this Agreement immediately and without notice in the event that Merchant breaches this Agreement. Termination of this Agreement shall not effect any obligation assumed or incurred by Merchant and existing as of the date of termination. Following termination of this Agreement, Merchant shall no longer honor Cards or use any of the materials issued under this Agreement. Merchant expressly agrees to pay NMC on demand any and all indebtedness incurred pursuant to this Agreement and costs and/or expenses which may be incurred by NMC in any attempt to enforce any provision of this Agreement or to collect any indebtedness incurred pursuant to this Agreement, including but not limited to court costs and all expenses and reasonable attorney's fees. This Agreement cannot be assigned to any party by Merchant, but will be binding upon and insure to the benefit of any heirs, representatives, or successors. This Agreement may be amended at any time by NMC upon written notice to Merchant. This Agreement shall be construed and enforced in accordance with the internal laws of the State of California without reference to choice of law rules. Any legal action, including an original complaint or third party claim, by or in the right of any party to this Agreement or any action arising under or related to this Agreement, including but not limited to a claim for payment under the Agreement, and also including any non-contract claim, shall be brought and maintained exclusively in a state or federal court of competent subject matter jurisdiction in Orange County, California, and the parties hereby submit themselves to the personal jurisdiction and venue of those courts for the purpose of any such action and hereby waive any defense related to personal jurisdiction, process of venue brought in those courts.

11.1 Notwithstanding the foregoing or anything contained herein to the contrary, NMC shall not be liable for nonperformance, delays or loss or damage caused by or resulting from: (A) Hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack: (1) by any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval or air forces; or (2) by an agent of any such government, power authority or forces; (B) Any weapon or war employing atomic fission or radioactive force whether in time of peace or war; (C) Insurrection, rebellion, revolution, Civil War, usurped power, or action taken by government authority in hindering, combating or defending against such occurrence, or confiscation by order of any government or public authority. (D) Merchant acknowledges and agrees that it is Merchant's sole responsibility to comply with any and all Laws and Payment Network Regulations governing the issuance, use, and acceptance of gift certificates or gift cards (e.g., laws regarding expiration and unclaimed funds).

11.2 Acknowledgement of Ownership of System. USER acknowledges that it does not own any of the programs or processes of NMC which are covered by this Agreement. USER further acknowledges that it has no right to use any service mark of NMC or any of the new works involved unless approved by NMC in writing. The merchant will make no attempt to duplicate or otherwise obtain the components, processes, logic, source code or otherwise attempt to reverse engineer any equipment or software provided by NMC.

11.3 Merchant permits NMC the right to use the Merchant's name, logo, trademark, service marks or any other proprietary information of merchant or its affiliates in any advertising, promotional, or instructional material provided by or for NMC.

11.4 Waiver. Any delay or failure of either party hereto at any time to require performance by the other party of any provision of this Agreement shall in no way affect the right of such party to require performance of that or any other provision, and any waiver by either party of any breach of any provision of this Agreement shall not be construed as a waiver of any subsequent breach of any provision, a waiver of this provision itself or a waiver of any other right under this Agreement.

11.5 Severability. If any of the provisions of this Agreement are deemed or held to be invalid under any applicable statute or rule of law, they are, to that extent, to be deemed omitted, but in that event, all other provisions shall remain valid and in full force and effect.

11.6 Section Heading. Section heading are used for convenience only and in no way limit or alter the terms of this Agreement.

11.7 Integration and Governing Law. This Agreement constitutes the entire Agreement between USER and NMC and supersedes all proposals oral or written and all other communications oral or written between the parties relating to the subject matter of this Agreement. Except as provided in Article 5.2, this Agreement may be modified only in writing signed by the Authorized Representatives of NMC and User. This Agreement shall be governed by the laws of the State of California.

11.8 Legal Expense. In the event suit is brought arising out of the performance of this agreement or any term or condition hereunder, the prevailing party to such litigation shall be entitled to all reasonable expenses incurred in said litigation including reasonable attorney's, accountant's fees and court costs from the other party.

11.9 The provisions of Section 10 shall survive the termination of this Agreement.